

SUMMARY OF ESTABLISHMENT AND ELIGIBILITY RULES FOR STATE EXCHANGES

INTRODUCTION

On March 12, 2012, the Centers for Medicare and Medicaid Services (CMS) issued a 644-page final rule on state Exchange establishment and eligibility under the Affordable Care Act (ACA). This final rule incorporates many of the provisions originally published as two proposed rules: *Establishment of Exchanges and Qualified Health Plans*, issued July 15, 2011 and *Exchange Functions in the Individual Market: Eligibility Determinations and Exchange Standards for Employers*, issued August 17, 2011.

Generally, this final rule outlines standards for:

- establishment, operation, and minimum functionality of state Exchanges, including standards for eligibility determination and enrollment in qualified health plans (QHPs) and insurance affordability programs;
- participation of health insurance issuers in an Exchange, including the minimum certification standards for QHPs; and
- participation of employers in the Small Business Health Options Program (SHOP).

EXCHANGE ESTABLISHMENT AND OPERATION

Beginning in 2014, individuals and small businesses will be able to purchase private health insurance through competitive marketplaces called Exchanges. This final rule sets forth the minimum federal standards that states must meet if they elect to establish and operate an Exchange, including the requirement that the Exchange:

- be approved or conditionally approved by HHS no later than January 1, 2013;
- be a non-profit entity established by the state, an independent public agency, or part of an existing state agency;
- have governance principles that include consumer representation, prohibit conflicts of interest and promote ethical and financial disclosure standards, unless established as part of an existing state agency;
- determine eligibility for Medicaid, CHIP, advance payments of premium tax credits, cost-sharing reductions, and the Basic Health Plan;
- certify health plans to be offered in the Exchange as qualified health plans; and

- offer consumer tools and assistance to facilitate enrollment of qualified individuals, qualified employers and employees in qualified health plans, including a website to facilitate comparisons among plans, a toll-free hotline for consumer support, and a “Navigator” program for consumer outreach and education.

States have substantial flexibility in determining how to perform these functions, including the ability to establish an Exchange in partnership with other states through a regional Exchange; operate multiple subsidiary Exchanges that cover distinct areas within the state; apply to operate the Exchange in years subsequent to 2014; contract with the state Medicaid agency or other state agency; and operate an individual market Exchange and SHOP under separate governance and administrative structures.

QUALIFIED HEALTH PLANS

In order to participate in an Exchange, a health insurance issuer must be certified by the Exchange to offer qualified health plans. Exchanges must ensure health insurance issuers meet two basic requirements to be certified to offer qualified health plans:

- demonstrate compliance with minimum certification requirements and any requirement imposed by the state and the Exchange as a condition of participation or certification, including standards related to licensure and the risk adjustment program; and
- offer plans that are in the best interest of qualified individuals and have adequate provider networks to provide consumers choice.

ELIGIBILITY DETERMINATION

The state Exchange may fulfill its eligibility functions directly or indirectly, though contracting arrangements with other “eligible contracting entities” Each agreement must specify the respective responsibilities of each party in connection with eligibility determination. It must also ensure applicants experience a seamless eligibility and enrollment process and that information is shared electronically via a secure interface.

SMALL BUSINESS HEALTH OPTIONS PROGRAM (SHOP)

Beginning in 2014, Exchanges will operate a Small Business Health Options Program (SHOP) to provide small employers and their employees’ health insurance coverage.

Exchanges will decide how a SHOP is structured and will have some flexibility to determine the size of small businesses that can participate in SHOP, including minimum participation rules, and the structure of coverage choices and options for small businesses.

CHANGES AND FORTHCOMING RULEMAKING

Some provisions differ from the proposed rule. Each of these changes is outlined in the final rule under the section titled *Provisions of the Final Regulations*.

This final rule does not address all of the Exchange provisions in the ACA. Several topics are expected to be addressed through future rulemaking, including, but is not limited to: the state Partnership model; certificates of exemption from the individual responsibility; appeals of individual eligibility determinations; coordination of notices between the Exchange, Medicaid, and CHIP; eligibility determination for advance payments of the premium tax credit and cost-sharing reductions (Department of the Treasury); standards for application assisters and authorized representatives; standards for multi-State plans (Office of Management and Budget); and the process and criteria by which accrediting entities will be recognized.

A portion of this rule is issued as interim final. As such, the Department of Health and Human Services (HHS) will observe a 45-day comment period on provisions related to involvement of agents and brokers, §155.220(a)(3); Medicaid and CHIP regulations, §155.300(b); options for conducting eligibility determinations, §155.302; eligibility standards for cost-sharing reductions, §155.305(g); timeliness standards for Exchange eligibility determinations, §155.310(e); applicants with special circumstances, §155.315(g); timeliness standards for the transmission of information for the administration of advance payments of the premium tax credit and cost-sharing reductions, §155.340(d); and agreements between agencies administering insurance affordability programs, §155.345(a) and §155.345(g).